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No. 83-215

In The

Supreme Court of the United States

October Term, 1983

HILDA BRIDGES,

Petitioner,

vs.

CAPE PUBLICATIONS, INC. and SCOTT MACLAY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

BRIEF IN OPPOSITION

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September, 1983

QUESTION PRESENTED

1. May a newspaper, which lawfully obtains and publishes an accurate photograph of a major public news event in Brevard County, Florida, be held liable for tortious "invasion of privacy" consistently with Florida common law and the First and Fourteenth Amendments to the United States Constitution?

LIST OF PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties. Gannett Co., Inc., a non-party, is the parent company of Respondent Cape Publications, Inc. and of Gannett News Service, Inc., a dismissed former party (Pet. App. A-29).

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BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of Appeal of the State of Florida (Pet. App. A-2 thru A-6) is reported at 423 So.2d 426 (1982).

JURISDICTION

The decision of the District Court of Appeal of the State of Florida, Fifth District, was entered on November 24, 1982 (Pet. App. A-2), and that Court denied rehearing on December 14, 1982 (Pet. App. A-7). The decision of the Supreme Court of Florida, declining to accept jurisdiction, was entered on May 12, 1983 (Pet. App. A-9 and A-10). The Petition for a Writ of Certiorari was filed by mail on August 9, 1983. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

AUTHORITIES INVOLVED

The text of Rule 9.030(a) of the Florida Rules of Appellate Procedure is set forth in Respondents' Appendix hereto at A-1.

STATEMENT OF THE CASE

Facts

On Monday afternoon, August 1, 1977, Petitioner Hilda Bridges was kidnapped at gunpoint by her estranged husband, Clyde Bridges, from the McDonnell Douglas plant in Titusville, Forida. Waving a revolver at employees who tried to stop him, Clyde forced Hilda into his car and fled with her to their former apartment in Cocoa, Florida. Clyde, who held Hilda in the apartment at gunpoint, ordered her to disrobe, apparently in an effort to prevent her escape.

Police and Sheriff's Deputies had been alerted to the forcible abduction, but failed to intercept the 19-mile flight to Cocoa. They later discovered where Hilda Bridges was being held captive, and surrounded the apartment building with a large number of police cars and armed officers.

After a period of siege, police issued their final order, by bullhorn, to the abductor to surrender. Seconds later, a gunshot rang out and a scream was heard. Officers, with guns and rifles drawn, burst into the apartment, and found the kidnapper writhing on the floor, groping for the gun with which he had shot himself. A police officer kicked the gun beyond the kidnapper's reach. Hilda Bridges fled the apartment with another police officer, shielding herself with a towel in front of her, and ultimately was ushered into a police car.

During her escape, Hilda Bridges was in full public view of spectators on adjacent public streets and properties. Two photographers employed by TODAY newspaper, including Respondent Scott Maclay, were among those gathered behind

police lines outside the apartment building. They took numerous photographs of the police siege, and of Hilda Bridges' traumatic escape from the surrounded apartment.

The next morning, five of those photographs were published, along with detailed news articles describing the criminal episodes, in TODAY newspaper by Respondent Cape Publications, Inc. A reproduction of that news article and photograph (subjectively and unjustifiably characterized by Petitioner as "lurid" and "sexually titillating" [Pet. i,12]), is annexed at A-2 to A-3 of Respondents' Appendix to this Brief. Contrary to Petitioner's claim, the photograph does not depict a "nude frontal view" (Pet. 5).[1] As the court below stated: "[T]he photograph revealed little more than could be seen had [Bridges] been wearing a bikini and somewhat less than some bathing suits seen on the beaches . . . The published photograph is more a depiction of grief, fright, emotional tension and flight than it is an appeal to other sensual appetites." (Pet. App. A-3).

History of the Case

The photograph of Bridges' escape from captivity — which won photographic "spot news" awards from local, state and national press organizations — formed the basis for this case, in which Bridges sought damages from the newspaper and its photographer for a variety of torts (Pet. App. A-11 thru A-17), including invasion of privacy by disclosure of "private facts."

In September, 1981, the action was tried before a jury, which awarded Bridges $1,000 compensatory damages and $9,000 punitive damages. On appeal, the Florida District Court of Appeal unanimously reversed the judgment and dismissed the action as a matter of law (Pet. App. A-6). The Court held that,

[1]The newspaper front page annexed hereto was submitted to the Florida District Court of Appeal, and is identical to the front page annexed to Petitioner's Complaint (Pet. App. A-18 and A-20) except for the text of its headlines.

under settled Florida law, it is not an invasion of privacy to publish a newspaper photograph of an occurrence of public interest, notwithstanding the event may have been embarrassing or distressful to those involved in it (Pet. App. A-5). The District Court of Appeal denied Bridges' motion for rehearing on December 14, 1982 (Pet. App. A-7).

On January 10, 1983, Bridges sought to have the Florida Supreme Court review the case pursuant to its "conflict" jurisdiction. Fla. R. App. P. Rule 9.030(a) (2) (A) (iv) (Resp. App. A-6). In the Florida Supreme Court, Bridges did not raise the issue which she presents to this Court. Instead, Bridges specifically asked the Florida Supreme Court to "set . . . aside any questions relating to Bridges' cause of action for invasion of privacy" (Resp. App. A-11). The Florida Supreme Court declined to accept jurisdiction on May 12, 1983 (Pet. App. A-9 and A-10).

ARGUMENT

The Petition must be denied because the opinion of the Court below was based solely upon Florida common law, not upon any interpretation of federal constitutional principles. Further, the opinion is consistent with federal law long ago established by this Court. Finally, the question presented to this Court was not preserved for review, since Petitioner disclaimed that very question in the Supreme Court of Florida when she unsuccessfully sought to have that Court accept jurisdiction of the case.

(a) *The opinion below is based solely upon Florida tort law.*

Throughout the history of this case, Respondents newspaper and photographer insisted that the First and Fourteenth Amendments precluded tort liability for publication of the accurate photograph of Bridges' newsworthy escape from captivity (Pet. App. A-23 thru A-26; A-32). Respondents also

consistently argued that the publication was not tortious under Florida common law *(id.)*. The opinion below discussed only the Florida common law of privacy, and dismissed the action solely through application of State tort principles.

The District Court of Appeal, which did not even mention the First Amendment in its opinion, merely analyzed the development of the "privacy" tort in Florida, and concluded that Florida law is "settled that where one becomes an actor in an occurrence of public interest, it is not a tortious invasion of privacy to publish her photograph with an account of such occurrence." (Pet. App. A-5).

That "settled" principle of tort law was established in Florida in *Cason v. Baskin,* 155 Fla. 198, 20 So.2d 243 (1944), *on appeal after remand,* 159 Fla. 31, 30 So.2d 635 (1947), which for the first time recognized the "invasion of privacy" tort in Florida. The Florida Supreme Court carefully circumscribed the new tort, however, holding that Florida law does *not* proscribe publication of the name or picture of persons in connection with publication of news. *Cason v. Baskin, id.,* 20 So.2d at 251. In *Jacova v. Southern Radio and Television Company,* 83 So.2d 34, 36 (Fla. 1955), the Florida Supreme Court reiterated its earlier holding that publication of a news photograph, such as that of Bridges, does not interfere with the zone of privacy protected in that State: "Where one, willingly or not, becomes an actor in an occurrence of public or general interest, he emerges from his seclusion, and it is not an invasion of his 'right of privacy' to publish his photograph with an account of such occurrence [citation omitted]." *Accord, Harms v. Miami Daily News, Inc.,* 127 So.2d 715 (Fla. 3d DCA 1961).

The Court below clearly did not construe the First Amendment to limit an otherwise viable State tort claim by Bridges. Rather, it simply acknowledged "settled" common law in Florida: truthful publication of news — both textual and

photographic — is not tortious. *Accord,* Restatement (Second) of Torts, § 652 D, comments d, g; W. Prosser, *Law of Torts* § 118, p. 824-25 (4th Ed. 1971).

Petitioner alleges that this case "requires an answer to the question" whether truth is a defense to Petitioner's claim for invasion of privacy (Pet. 11). The answer to that question, however, may again be found in State law. This case involves a claim for invasion of privacy for public disclosure of alleged embarrassing private information. The defense to that branch of invasion of privacy, under Florida tort law, is newsworthiness, not truth. In *Fletcher v. Florida Publishing Co.,* 319 So.2d 100, 111 (Fla. 1st DCA 1975), *rev'd on other grounds,* 340 So.2d 914 (Fla. 1976), *cert. denied,* 431 U.S. 930 (1977), the trial court dismissed a fire victim's privacy claim against a Florida newspaper, which had published a photograph of the silhouette of the charred body of plaintiff's daughter. Dismissal was affirmed because the public's interest in such matters is "obvious:"

> Unquestionably the fire in appellant's home coupled with the tragic death of her daughter was of obvious legitimate public interest. That the published matter complained of is of general public interest has always been considered a defense to a claim of invasion of privacy by publication. Finding that the matter published was of obvious legitimate public interest, the publication, per se, was not an invasion of privacy.

Accord, Gibson v. Maloney, 231 So.2d 823, 825 (Fla.), *cert. denied,* 398 U.S. 951 (1970).

(b) *Petitioner raises no substantial federal question.*

Even assuming that the opinion below did reach a federal constitutional issue, review by this Court would nevertheless be inappropriate.

Bridges' argument to this Court is indistinct and ambiguous.

As best it can be discerned from her Petition, Bridges concedes that the newspaper's publication of the text of the news article concerning her escape was absolutely privileged by reason of the First Amendment (Pet. 12; Pet. App. A-13). Inappropriately, she then argues to this Court that the concurrent publication of the photograph of her escape is not constitutionally privileged, upon the ground that the photograph is not "speech" (Pet. 12 and n. 7).

It is apparent that Petitioner's claim is specious. No rational constitutional principle or interpretation can fully protect a newspaper's accurate textual description of a newsworthy event (no matter how graphic) yet simultaneously afford no protection to an accompanying photograph of that event (no matter how innocuous). News photographs are as much encompassed and protected by the First Amendment as are newspaper articles. *See Kaplan v. California*, 413 U.S. 115, 119 (1973); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952). Petitioner's theory does not present a substantial federal question.

(c) *Petitioner abandoned her current claim in the Florida courts.*

This Court has jurisdiction to review only final judgments and decrees of "the highest court of a State in which a decision could be had." 28 U.S.C. § 1257; *Banks v. California*, 395 U.S. 708 (1969). Where a State's highest court has discretionary jurisdiction, review in that court must be sought before jurisdiction exists in this Court. *Stratton v. Stratton*, 239 U.S. 55 (1915).

The Florida Supreme Court has discretionary jurisdiction to review decisions of District Courts of Appeal which expressly construe a provision of the federal Constitution. Fla. R. App. P. Rule 9.030(a) (2) (A) (ii). Bridges did not seek Florida Supreme Court review on that ground. Instead, she attempted

to appeal pursuant to the Florida Supreme Court's separate "conflict" jurisdiction. Fla. R. App. P. Rule 9.030(a) (2) (A) (iv). In so doing, Bridges expressly disclaimed reliance upon the arguments she presents here when she requested the Florida Supreme Court to "set. . . aside any questions relating to Bridges' cause of action for invasion of privacy . . ." (Resp. App. A-11). Petitioner's disavowal of her "invasion of privacy" claim in the Florida Supreme Court must be deemed a waiver of her right to raise the issue in this Court. *See Beck v. Washington*, 369 U.S. 541 (1962).

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Dated: September, 1983

Respectfully submitted,

JOHN B. McCRORY, P.C.
ROBERT C. BERNIUS

Attorneys for Respondents

FLORIDA RULES OF APPELLATE PROCEDURE

RESPONDENTS' APPENDIX

Rule 9.030. Jurisdiction of Courts

(a) Jurisdiction of Supreme Court

* * *

(2) *Discretionary Jurisdiction.* The discretionary jurisdiction of the Supreme Court may be sought to review:

(A) decisions of district courts of appeal that:

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;

(v) pass upon a question certified to be of great public importance;

(vi) are certified to be in direct conflict with decisions of other district courts of appeal;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the Supreme Court, and:

(i) to be of great importance, or

(ii) to have a great effect on the proper administration of justice;

(C) questions of law certified by the Supreme Court of the United States or a United States Court of Appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida [footnotes omitted].

NORTH KOREA establishes unprecedented 'military sea boundary' and says most foreign ships and planes will be banned from entering area without permission, 1A

SECRETARY OF State Cyrus Vance says in Egypt he plans to 'see what we can do to speed this process' toward Mideast peace talks that include Palestinians, 5A

POLICE KILL man, wound another in putting down disturbances in township of Soweto near Johannesburg, 8A

REPUBLICAN LEADERS accuse President Carter of 'blatant political payoff' in supporting legislation to require that American tankers get preference in hauling imported oil, 3A

CARTER

HOUSE OPENS debate on President Carter's energy plan and President makes direct public appeal for passage of critical elements, including five-cent per gallon increase in gasoline taxes, 5A

SENATE DEMOCRATS fail to break Republican-led filibuster against bill allowing Senate candidates to tap treasury for campaign funds, 3A

CHEMICAL USED to inflate airbags is highly toxic and presents threat of explosion, Rep. Bud Shuster, R-Pa., says, 5A

AFL-CIO President George Meany says it would be 'blatant discrimination' to create lower minimum wage for youths, 7A

STEEL INDUSTRY believes iron ore workers' strike will have little immediate effect on steel production, 10C

IN FLORIDA

JUPITER MAN surrenders after being wounded while barricading himself in bar with two hostages, 4B

SURVIVOR OF blood bath that left six dead in Miami suburb last week provides information for police sketch, 4B

ON-THE-AIR suicide three years ago hasn't changed television talk show, says news director, 4B

IN BREVARD

COUNTY WORKERS are seeking a 15.7 per cent wage hike as union negotiations open, 1B.

PRESIDENTIAL ADVISOR tours the USS James Madison, a submarine docked at Port Canaveral, 1B.

TEACHERS WILL be paid for time they spent at PTA seminars, an arbitrator rules, 1B.

SPECIALS TODAY

AREA FISHERMEN have found a cure for poor trout fishing this summer. It's pigfish, a grunting baitfish found around bulkheads or old piers. Bill Sargent has the details, 3C.

DEEJAYS PLAY the name game for a variety of reasons, including that of avoiding harassment from fans and fanatics alike, but the end result is that pseudonyms fill the air, 1D.

TODAY's Features

Army Chris, 1D	Letters, 6A
Bridge, 3D	Local News, 1-3B
Business, 8-10C	Mary Smith, 1C
Classified, 3-7C	Mel Saloman, 1B
Comics, 6D	Movies, 2D
Crossword, 5D	Nation and Focus, 2A
Dear Abby, 5D	People, 1-3D
Deaths, 2B	Sports, 1-3E
Earl Wilson, 9D	State Briefs, 4B
Editorials, 4 & 7A	Television, 2D
HELP!, 1B	Weather, 2A
Horoscope, 5D	

Four Sections

TODAY Staff Photo by Scott Hooten

CAPT. RED MAY ESCORTS HILDA BRIDGES FROM SHOOTING SCENE
. . . agents theorize her husband made her strip to keep her from escaping

Five Senators Defy Disclosure Deadline

- List of lawmakers who didn't file, 6A
- Circuit Court Judge Roger Dykes files, 1B

TALLAHASSEE (AP) — Senate President-designate Philip D. Lewis and four other prominent senators defied the voters Monday by refusing to file their financial disclosure statements.

The forms of as many as 20 lawmakers weren't on file in a state Elections Division that was rushing under an avalanche of paper. Three days 1,000 officials tried to meet the Monday deadline for filing the forms or being vulnerable to sanctions that may be imposed by the Legislature or the state Ethics Commission.

Of the officials who did file, Agriculture Commissioner Doyle Conner reported a net worth of $964,431; House Speaker Donald Tucker reported a net worth of $420,200 while Comptroller Gerald Lewis said his net worth was $58,581.

These reports and others were filed under the right - disclosure requirements that the voters approved last November by more than 1.7 million Florida voters ordered elected state and county officials to publicly report their finances after the Legislature balked repeatedly at tough disclosure proposals.

Ethics Commissioner Dexter Lehtinen said his staff would draw up a list of the officials who hadn't filed and turn that over to the panel at its Aug. 23 meeting. However, he said the panel may not be able to take disciplinary action unless sworn complaints are filed.

Under the Sunshine Amendment, officials are required to list a source of part of their assets and liabilities in excess of $1,000. Their net worth and other their latest income tax return or stock income source worth more than $1,000 and their secondary income sources.

Most of Florida's 140 lawmakers and top state officials filed the forms but some appeared not to have filled them out completely. Through it all, confused officials raged with the noise.

"We're getting calls from attorneys and representatives all over the state wanting to know if it's all right to mail them today," said Wilmont Farrell, chief of the elections records bureau. "They're not fines if they're in the mail. This is

See DISCLOSURE, Col. 4 Back Page This Section

By GLEN MACNOW and SEAN HICKEY
TODAY Staff Writers

A Cocoa man, free on bond with a court order barring him from seeing his estranged wife, kidnaped her from work Monday and held her hostage for two hours before shooting himself through the heart.

Clyde Bridges II, of 619 Peachtree St., Apt. 3, was pronounced dead at the scene of his apartment shortly after 6 p.m. Monday after shooting himself once with a .357 magnum revolver, police said.

His wife, Hilda Bridges, 24, of Titusville, stripped of her clothes came running from the apartment after the shooting covering herself with a small towel. Although she was not wounded, police said, she suffered cuts and bruises on the head from an apparent beating. Officers theorized Bridges made his wife strip to keep her from escaping.

Bridges was in the civil suit over an alleged narcotics possession and resisting arrest with a dangerous weapon. He was arrested in his apartment by sheriff's agents June 15 and had been out on $500 bail, according to a sheriff's department spokesman.

Bridges and his wife had been separated for about three weeks, neighbors said. Last week a circuit court judge issued a restraining order barring him from contacting her.

Witnesses said Bridges, an unemployed air duct worker, approached his wife outside the McDonnell Douglas Astronautics Co. plant in Titusville, where she works, shortly after the 4 p.m. quitting time. He grabbed her and forced her into his car while several bystanders tried to stop him.

Witnesses said Bridges pulled a silver-plated revolver and waved it at those attempting to stop him before driving away.

"Everybody was trying to stop him," said Mae Kubiko, an assembly line worker at the plant. "But he just kept driving in the lot trying to get away. He came close to hitting several people and finally took off across the front lawn. It

See SUICIDE, Col. 1 Back Page This Section

TODAY Staff Photo by Bob Brown

CLYDE BRIDGES' BODY IS REMOVED
. . . 21-year-old shot himself with .357 magnum

Officer's Son Got A 'Ringside Seat'

By GLEN MACNOW
TODAY Staff Writer

Ray Phelps Jr. of Cocoa said he wanted to watch his deputy sheriff father on the job Monday "just to see what it was like."

"He told me his work was exciting," Ray Jr. said, "so I decided to tag along for a day."

Ray Phelps Jr. and Ray Phelps, Sr. ended up with more excitement than they planned, however, when the sheriff's department officer had two men wound up in a tense vigil that ended in death.

Ray Jr., 18, said his father had offered to let him ride in the squad car Monday during the officer's daily rounds.

"I'm thinking of becoming a policeman myself," said the Cocoa High student. "So I didn't hesitate on his offer."

"Of course I didn't figure that I'd end up watching my father risk his life," he added.

Father and son were driving near the sheriff's station in Titusville when a radio call directed them to a possible kidnaping situation at 619 Peachtree St. in Cocoa.

By the time they got there, the neighborhood was swarming with police cars and the accused man had barricaded himself in an apartment house with a hostage.

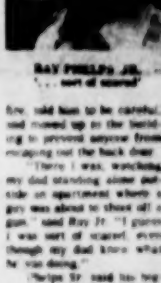
Ray Sr. calmly placed his son out of the line of fire, told him to be careful, and moved up to the building to prevent anyone from escaping out the back door.

"There I was, watching my dad standing alone outside an apartment where a guy was about to shoot off a gun," said Ray Jr. "I guess I was sort of scared, even though my dad knew what he was doing."

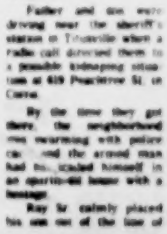
Phelps Sr. said his biggest worry was the safety of the hostage inside the apartment.

"You can't get nervous in this type of situation," he said. "There's just no time for it. Afterward, I got home and got nervous."

As Phelps Jr. watched, there was a gunshot and his father rushed toward the door of the house with other officers. In a few moments, the drama was over. One man was dead, but no police officers were injured. The hostage was safe.



RAY PHELPS JR.
. . . sort of scared



FRANCIS GARY POWERS
. . . TV helicopter pilot

Ex-Spy Pilot Dies in Crash

LOS ANGELES — Former U-2 spy plane pilot Francis Gary Powers died Monday in a crash of his KNBC-TV helicopter in a field in Encino, fire officials said.

A television camera man, George Spears, also died in the crash with Powers, 47, who had been piloting the news helicopter for the Burbank station since last November. Fire report

Girl Dies of Head Wound In 'Son of Sam' Ambush

NEW YORK (AP) — The mad gunman who calls himself "Son of Sam" claimed a tenth life Monday when a young woman died of a massive gunshot wound in the skull.

Stacy Moskowitz, a 20-year-old blonde secretary, was fatally wounded Sunday at 2:30 a.m. while she sat in a parked car under a bright street light with her date, Robert Violante, 20. Violante, also shot in the head, lost his left eye and may lose the sight in his right eye.

While 13 shootings have been attributed to Son of Sam and his .44-caliber killing revolver, seven of the victims have survived. Miss Moskowitz was the fifth to die since his first known attack one year and three days ago.

"An animal like this has to be caught, not to die or be killed but to be tortured for life," Stacy's mother, Reyna Moskowitz, told reporters.

"He'll see Indians. He's not human," Mrs. Moskowitz said. Stacy screaming down her throat. "He's not human to do this to young people."

Stacy's father, Jerome Moskowitz, also wept as he told reporters, "I lost a daughter I loved very much she was a great kid."

Stacy Moskowitz died at 5:32 p.m., nearly 20 hours after the crazed gunman shot her and Violante, a clothing salesman.

Kept alive only by a respirator, the attractive Brooklyn girl succumbed to massive brain damage.

"We did everything we could — it just wasn't enough," said Dr. William Sharbrack, a neurosurgeon.

Had she survived, he said, she would have been doomed to a vegetable-like state for life.

Meanwhile, a force of [illegible] police were involved in the search for the psychopathic killer.

Adding to their problems was the fact that about a dozen men, including one prime suspect, were released from police custody late because all were under surveillance at the time of the shooting.

But police now have a victim who saw the gunman, described as being white, about 5-foot-7, about 250 pounds, between 25 and 30 years old and carrying a .44-caliber revolver. One previous victim also saw him, but could not supply a good description.

A doctor at Kings County Hospital told Robert Violante had given police a description of the gunman. "He actually saw him," said Dr. Jeffrey Freedman.

But Freedman, an optometrist, noted that Violante had lost one eye to the gunman, with the other at least partially damaged. "I don't know if he (Violante) can identify him, since we don't know if he'll be able to see," Freedman said.

'An animal like this has to be caught, not to die or be killed but to be tortured for life.'

—Mrs. Reyna Moskowitz

Spirit Low At Jack's

LOUISVILLE, Ky. (AP) — How scarce is Jack Daniel's Tennessee sour mash whisky?

It's so scarce, say some tourists, that at the corporate stockholders' annual cocktail party, bartenders were pouring it from pitchers.

The reception last week confirmed what W. L. Lyons Brown Jr., president and chief executive officer, had told the Brown-Forman Distillers stockholders earlier: demand for Jack Daniel's continues to exceed supply.

"The stockholders, a few of them laughed at the joke [illegible], but they weren't surprised. Brown said in an interview Monday. "It's been short most of this year."

Because of the nature of the distilling business, demand must be projected four years in advance, when the liquor goes into the casks to be aged.

"If you guess wrong, you just don't have enough available," said a company spokesman. "It's not like

TODAY's Chuckle

A conference is a group of people discussing what they should be doing.

Left, Seconds After Ordering Clyde Bridges To Give Up Sheriff's Deputies Hear Shot; Right, Agents Rush His Cocoa Apartment

Cocoa Man Kills Self in Daylight Abduction

SUICIDE, From 1A

...on a real mess.

Bridges entered 50 an... through a security mes... customers couldn't hell... to draw inward [40 or 5...].

Cocoa police set up a roadblock on U.S. 1 near the Brevard Cameway, but didn't find the couple.

Cocoa police spotted the car an hour later outside Bridges apartment. He was taken up shortly after... his wife as a hostage.

A short time later, sher... department agents, led by Capt. Mark Overacker and Capt. Red May ar... ...ssed to talk Bridges into surrendering.

Action was stalled while agents sought vainly to locate a relative or friend of Bridges who could persuade him to give up. Another plan, talking to Bridges over the phone, failed when officers learned his apartment had no telephone.

Agents decided to move in and surround the apartment shortly after 5 p.m.

"Let's get this over with before dark," May told officers, "and please be careful."

Six squad cars from the sheriff's and Cocoa police departments drove up in front of the building, while other officers stood at the front and rear exits.

"Clyde Bridges, this is the Brevard County Sheriff's Department," May called through a bullhorn. "Come out with your hands up."

Seconds later, agents heard the pop of a revolver and the screams of a woman. Fearing Bridges had shot his wife, police rushed the building to find Mrs. Bridges nude screaming on a stairway and Bridges sprawling on the floor, apparently reaching for the gun he had dropped after shooting himself.

A deputy kicked the gun away and within moments Bridge's dead of internal wounds as his lung filled w...mpagning over his body.

According to May, Mrs. Bridges seemed calm after the shooting and wanted to give agents her statement before receiving medical treatment.

She told agents her husband had threatened to kill her after the kidnapping, and had charged: "I've had enough."

Mrs. Bridges was taken to Wuesthoff Memorial Hospital in Rockledge, where she was treated for shock and lacerations, and released. She was taken to the Titusville home of a friend.

Police said there was no indication she had been sexually assaulted.

Bridges' neighbors, who called him a quiet man, said they were shocked by his actions.

"He just has a wife never did much fighting or screaming," said apartment owner Ann Graybill. "I was pretty surprised when she moved out a few weeks ago. He seemed like a nice person."

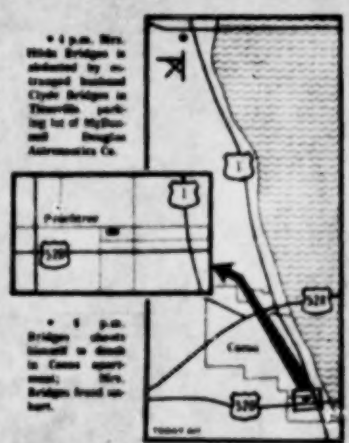
"Clyde used to come over when I got together with friends to drink beer and watch ballgames," said Bobby Smith who lived in the apartment above Bridges. "He didn't ever exhibit any stress."

"Sometimes he seemed kind of down," said Smith, who works at the Brevard Mental Health Center "but it never seemed to me he could do something like that."

Sheriff's agents, however, had a different feeling about Bridges.

"Everything we did was with one thing in mind," said Overacker. "We wanted to get that girl out alive."

"In that sense," May added, "I guess we won."


• 1 p.m. Mrs. Hilda Bridges is abducted by estranged husband Clyde Bridges in Titusville parking lot of Hollingsead Douglas Aeronautics Co.
Pineview
1
520
528
Cocoa
• 5 p.m. Bridges shoots himself to death in Cocoa apartment. Mrs. Bridges found unhurt.

President Inks Bill For NASA

WASHINGTON (AP) — President Carter has signed into authorizing $8.3 billion in appropriations for the next fiscal year, the White House said Monday. The bills include a $4.06 billion appropriation for NASA programs.

In addition to the NASA appropriation, the White House announcement said Carter approved the following authorizations for appropriation during fiscal 1978, which begins Oct. 1, 1977:

• $8.09 billion to buy weapons systems, pay for research, development, testing and evaluation of weapons systems, and to finance civil defense.

• $7.47 billion for operation of the Treasury Department, the Postal Service, the General Services Administration, the Civil Service Commission and most agencies in the Executive Office of the President.

• $5.72 billion for military construction.

The military construction bill requires the Defense Department to notify Congress and file an environmental impact statement on base changes involving more than 300 civilian employes.

At the same time, Carter asked Congress to provide an additional U.S. contribution of $1.5 million to voluntary programs of the Organization of American States.

The programs provide technical and educational assistance.

TODAY—AP Wirephoto

Well Heeled

Nancy McEwen, an assistant curator at the George Walter Vincent Smith Museum in Springfield, Mass., checks the "seams" on a 16-foot high, satin sculpture of a woman's legs by Ann Slavin. The well-heeled sculpture is called "Mrs. Lewis" and is part of an exhibition, "Women on Women."

Sub To Test Missile Off Brevard

A United States nuclear submarine will launch a ballistic Poseidon mis... Atlantic at noon Wednesday while submerged 30 miles off Brevard's coast, a Pentagon AP spokesman said Monday.

The launch will be the Poseidon missile and the fifth from ships and subs leaving the Earlier, since Poseidon last launches began here in August 1971, the spokesman said.

Presently, 31 of the Navy's 41 Ohio Class ballistic missile submarines are based at Kings Bay, Ga., and the remaining 10 are based at Bangor, Wash.

The Poseidon missile will be equipped with the nuclear weapons were

Visibility of the missile from land is expected to be poor. A meteorologist from the National Weather Service in Daytona Beach said

Conner Worth $664,833

DISCLOSURE, From 1A

TUCKER, LEWIS ALSO FILE

...were that qualifying deadline because we don't know exactly how this is supposed to work."

Lewis, D-West Palm Beach and chairman of the Senate Appropriations Committee, said the others refused to file after getting Senate Republican Leader Kenneth Plumlee's court challenge to the reform went. The others were Sens. Jack Gordon, D-Miami Beach, Dempsey Barron, D-Panama City, and William Gorman, R-Orlando.

Lewis, a millionaire real estate executive, was reported out of the state on a vacation from which he would not return until September, the last earlier filed a sworn statement saying his forms weren't completed because of this year's special legislative sessions. However, he promised to file them "on or about Aug. 1."

A variety of other lawmakers' forms weren't on file, but they may have been lost in the crush. For example, Speaker-designate Hyatt Brown's disclosure forms couldn't be located even though aides insisted that they had been filed earlier. They turned up later.

And officials couldn't even locate the file folder for House Transportation Chairman Fred Jones, D-Auburndale. No form was ever found in one of the half dozen disorganized piles of disclosure forms in a Capitol basement office that was jammed with news reporters.

Although the forms were supposed to be filed with the Elections Division, officials said that "most" of them were misdirected to the Ethics Commission. That panel drew up the forms and neglected to say

...banks that he has attributed to the tattered recession, is awaiting Senate confirmation for a seat on the Civil Aeronautics Board. He reported a net worth of $430,300 the listed assets of $1,681,326 and liabilities of $886,970.

He reported cash of $75,266, which included $68,675 in the Donald L. Tucker Dedicated Trust Fund, already owned by his stepdaughter Nai Polak. But Tucker reported elsewhere in his disclosure form $76,111 that he said was "in trust account."

Tucker's assets were chiefly in Tallahassee area real estate valued at $894,600. However, he noted that it "appears doubtful" that he will collect more than $977 in undistributed business partners who originally owed him $44,037.

In Tallahassee, the Tallahassee lawyer reported short-term debts of $107,500 and long-term notes worth $117,320. His unaudited report said that the long-term notes, without interest, require monthly payments of $1,200, and at least some of the debts extend to 1984. They were owed to a variety of Tallahassee area banks.

Tucker did not file his income tax form because, he said, the Internal Revenue Service had granted him an extension.

Comptroller Lewis reported a net worth of $8,511. He listed assets of $9,900 in savings accounts, stock in Vintage Enterprises Inc. worth $1,212, an automobile worth $2,000, personal goods worth $4,000, a second personal ship in Aligned-Carroll Farms in Riera of Peoples worth $1,000 and life insurance policies worth $18,051.

The comptroller also listed liabilities of $8,774 in loans against his life insurance policies. His primary source of income was his $40,000 state salary with some minor earnings from his investments. He reported paying taxes of $13,863.

Conner reported assets of $981,267 and liabilities of $288,434 for a net worth of $664,833. His assets chiefly were in agriculture with the largest being $597,000 in land, cattle and buildings at his Star C Ranch at Lloyd. He also reported $57,600 in assets for a Starke farm.

Statements Missing In Paperwork Flood

TALLAHASSEE (AP) — Financial disclosure forms for as many as 30 lawmakers weren't on file as a paper-clogged Elections Division Monday, the last day for filing before penalties may be imposed.

Disclosure forms for Clark Maxwell, R-Melbourne, could not be located in Tallahassee Monday, but Maxwell said he had mailed the documents last week. All other Brevard legislators have filed.

Five senators—Philip A. Lewis, D-West Palm Beach, Jack Gordon, D-Miami Beach, Dempsey Barron, D-Panama City, Kenneth Plante, R-Winter Park, and William Gorman, R-Orlando, are defying the voters' orders for full financial disclosure.

Other senators whose complete forms could not be located were Sen. Jon Gilman, D-Tavares, Education Chairman Curtis Peterson, D-Lakeland, Sen. Jim Scott, R-Fort Lauderdale, Sen. Dick Renick, D-Miami, Sen. Jim Thomas, D-Fort Lauderdale, Corrections Chairman Pat Thomas, D-Quincy, and Sen. George Williamson, R-Fort Lauderdale.

House members whose complete forms couldn't be located were Reps. Hugh Black III, D-Miami; Robert Crawford, D-Winter Haven, Harold Dyer, D-Hollywood, Commerce Chairman John Forbes, and Retirement Chairman George Grimsley, both D-Jacksonville and Criminal Justice Chairman Ralph Haben, D-Palmetto.

Others were Reps. Clyde Hagler, D-Pensacola, Mary Ellen Hawkins, R-Naples, George Reeher, R-St. Petersburg, Majority Leader John Hill, D-Miami, Wayne Hollingsworth, D-Lake City, Minority Leader Bob Jones, R-Delray Beach, John Lewis, D-Jacksonville, Tom Lewis, R-Palm Beach, John Cyril Malloy, D-Miami, James McDonald, R-St. Petersburg, and Paul Steinberg, D-Miami Beach.

Consumer Plan Pushed

WASHINGTON — In an effort to persuade Congress to create an Agency for Consumer Advocacy, the Carter Administration said Monday that 26 existing agencies would either be absorbed in the new office or scrapped, for a first-year savings of $5 million.

The umbrella agency, which President Carter said last April he wants Congress to establish, has not yet been approved. Some administration aides say they are worried that pressure from business lobbies has stalled the measure.

NATION

"We are recommending the consolidation of 26 existing consumer units which, as presently constituted, would duplicate the functions of the new consumer agency," Bert Lance, the President's budget director, told the speaker of the House and the president of the Senate in a letter.

WORLD

Soweto Rioter Killed

JOHANNESBURG, South Africa — Police shot and killed one man and wounded another in putting down disturbances Monday in parts of the huge black township of Soweto near Johannesburg, authorities said.

Brig. J.J. Gerber, deputy chief of Soweto police, said police also fired rubber bullets and tear gas, swung billies and unleashed dogs to disperse rioters in several locations.

He said officers captured 100 students who were

NOTICE INVOKING JURISDICTION OF FLORIDA SUPREME COURT

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FIFTH DISTRICT.

CASE NOS. 81-1552 and 81-1566

CAPE PUBLICATIONS, INC., and SCOTT MACLAY,
Defendants/respondents,

vs.

HILDA BRIDGES,
Plaintiff/petitioner.

NOTICE

NOTICE IS HEREBY GIVEN that HILDA BRIDGES, plaintiff/petitioner, invokes the certiorari jurisdiction of the Supreme Court to review the decision of this Court dated November 24, 1982, and rendered on December 16, 1982, upon denial of a timely filed petition for rehearing.

The petitioner invokes the jurisdiction of the Supreme Court on the ground that the decision rendered in the District Court of Appeal, Fifth District, is in direct conflict with decisions rendered by other District Courts of Appeal and the Supreme Court of Florida, pursuant to Rule 9.030(a) (2) (iii).

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and
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Attorneys for Petitioner

/s/EDWARD A. PERSE

[CERTIFICATE OF SERVICE OMITTED]

PETITIONER'S BRIEF ON JURISDICTION IN FLORIDA SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

CASE NO. 63,088

HILDA BRIDGES,

Petitioner,

vs.

CAPE PUBLICATIONS, INC., et al,

Respondents,

PETITIONER'S BRIEF ON JURISDICTION

HORTON, PERSE & GINSBERG
and
NANCE, CACCIATORE & SISSERSON
410 Concord Building
Miami, Florida 33130
Attorneys for Petitioner

[LIST OF CITATIONS AND AUTHORITIES OMITTED]

I.

INTRODUCTION

Petitioner was invasion of privacy, intentional infliction of emotional distress and trespass plaintiff in the trial court, and appellee/cross appellant in the District Court of Appeal. Respondents, newspaper and its assistant chief photographer, were defendants in the trial court and appellants/cross appellees in the District Court of Appeal. The parties will alternately be referred to herein as they stand before this Court and as follows: petitioner as "BRIDGES" and respondents, in the singular, as "CAPE PUBLICATIONS." The symbol "A" shall stand for petitioner's appendix filed contemporaneously herewith as required by the Florida Rules of Appellate Procedure.

All emphasis appearing in this brief is supplied by counsel unless otherwise noted.

II.

JURISDICTIONAL STATEMENT

This proceeding has been instituted, and the jurisdiction of this Court is invoked, under the aegis of Article IV, §3(b)(3) of the Florida Constitution as amended April 1, 1980, and Rule 9.030(a)(2)(iv), Florida Rules of Appellate Procedure, as construed by this Court in JENKINS v. STATE, 385 So. 2d 1356 (Fla. 1980), and DODI PUBLISHING CO. v. EDITORIAL AMERICA, S.A., 385 So. 2d 1369 (Fla. 1980). Petitioner contends that the decision sought to be reviewed is in express and direct conflict with the decisions rendered by the Florida Appellate Courts in — THOMPSON v. JACOBS, 314 So. 2d 797 (Fla. 1 DCA 1975); PORT O-CALL INN, INC. v. MORRIS, 206 So. 2d 241 (Fla. 2 DCA 1968); BERMIL CORPORATION v. SAWYER, 353 So. 2d 579 (Fla. 3 DCA 1977) and CAPE PUBLICATIONS, INC. v. ADAMS, 336 So. 2d 1197 (Fla. 4 DCA 1976).

III.

STATEMENT OF CASE AND FACTS

The District Court of Appeal, in the decision sought to be reviewed (A. 1-4), stated the facts of this case to be the following:

* * *

> "Appellee Bridges brought suit against appellants on the theories of invasion of privacy, *intentional infliction of emotional distress,* and trespass, alleging that appellant's conduct in publishing a photograph of appellee was actionable. The news story reported the abduction of appellee by her estranged husband who came to her workplace and at gunpoint forced her to do [sic] with him to their former apartment. The police were alerted and after surrounding the apartment began efforts to free appellee. Her husband forced her to disrobe in an effort to prevent her escape. Her life was obviously in danger. This is a typical exciting emotion-packed drama to which newspeople, and others, are attracted. It is a newsworthy story. Upon hearing a gunshot, the police stormed the apartment and rushed appellee outside to safety. Appellee ws [sic] clutching a dish towel to her body in order to conceal her nudity as she was escorted to the police car in full public view. The photograph revealed litle more than could be seen had appellee been wearing a bikini and somewhat less than some bathing suits seen on the beaches. There were other more revealing photographs taken which were not published. The published photograph is more a depiction of grief, fright, emotional tension and flight than it is an appeal to other sensual appetites. The jury awarded appellee $1,000.00 in compensatory damages and $9,000.00 in punitive damages."

* * *

BRIDGES had abandoned her trespass claim at trial. ***It must be emphasized that the trial court found that there was sufficient evidence to submit this case to the jury on both BRIDGES' invasion of privacy and intentional infliction of emotional distress theories.***

In the decision sought to be reviewed, the District Court held that BRIDGES' invasion of privacy action — and there is no doubt that that occurred here — had to give way to freedom of the press considerations because the event in which she was involved was "newsworthy." With regard to the invasion of privacy cause of action, the Court stated:

* * *

> "Although publication of the photograph, which won industry awards, could be considered by some to be in bad taste, the law in Florida seems settled that where one becomes an actor in an occurence of public interest, it is not an invasion of her right to privacy to publish her photograph with an account of such occurrence. *Jacova,* 83 So. 2d at 36. Just because the story and the photograph may be embarrassing or distressful to the plaintiff does not mean the newspaper cannot publish what is otherwise newsworthy."

* * *

With regard to BRIDGES' intentional infliction of emotional distress cause of action — which is an entirely different breed of cat — the District Court stated and held:

> "Likewise, the publication of the story and photograph does not meet the test of outrageousness as required for the independent tort of intentional infliction of emotional distress. *See Food Fair, Inc. v. Anderson,* 382 So. 2d 150, 153 (Fla. 5th DCA 1980).
>
> "Courts should be reluctant to interfere with a newspaper's privilege to publish news in the public interest. The trial court erred in denying appellant's Motions for Directed Verdict and Judgment Notwithstanding the Verdict, so we must reverse the judgment.
>
> REVERSED."

* * *

In due course, BRIDGES times [sic] filed a petition for rehearing (A. 5-7) which was denied. These certiorari proceedings followed in due course.

IV.

POINT INVOLVED ON JURISDICTION

WHETHER THE DECISION SOUGHT TO BE REVIEWED IS IN DIRECT CONFLICT WITH THE DECISIONS RENDERED BY THE DISTRICT COURTS OF APPEAL, FIRST, SECOND, THIRD AND FOURTH DISTRICTS, IN — THOMPSON v. JACOBS, supra; 314 So. 2d 797; PORT O-CALL, INN, INC. v. MORRIS, supra, 206 So. 2d 241; BERMIL CORP. v. SAWYER, supra, 353 So. 2d 579; AND CAPE PUBLICATIONS, INC. v. ADAMS, supra, 336 So. 2d 1197.

V.

ARGUMENT

THE DECISION SOUGHT TO BE REVIEWED IS IN DIRECT CONFLICT WITH THE DECISIONS RENDERED BY THE FLORIDA DISTRICT COURTS OF APPEAL, FIRST, SECOND, THIRD AND FOURTH DISTRICTS, IN THE CITED CASES.

A.

APPLICABLE JURISDICTIONAL PRINCIPLES

Petitioner does not believe that the recent amendment to Article IV as construed by the decisions rendered by this Court in JENKINS v. STATE, 385 So. 2d 1356 (Fla. 1980); and DODI PUBLISHING CO. v. EDITORIAL AMERICA, S.A., 385 So. 2d 1369 (Fla. 1980) changes in any appreciable way the guidelines utilized to ascertain and/or establish the existence of "direct conflict" in a case such as this which does not fall within the JENKINS and DODI rules. That is to say, this Court has jurisdiction to review the decisions of District Courts of Appeal on direct conflict grounds to resolve embarrassing conflict between such decisions. Jurisdiction may still be in-

voked where a District Court of Appeal: (1) announces a rule of law which conflicts with a rule previously announced by another Florida appellate court; or (2) applies a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case disposed of by a Florida appellate court; or (3) misapplies precedent; or (4) misapplies and/or refuses to apply applicable law to a case under consideration. See Article IV, Section 3, Florida Constitution, supra; WALE v. BARNES, 278 So. 2d 601 (Fla. 1973); BELCHER v. BELCHER, 271 So., 2d 7 (Fla. 1972); and NIELSEN v. CITY OF SARASOTA, 177 So. 2d 731 (Fla. 1960). *It, of course, became established that a category (3) misapplication of precedent occurred where a District Court relied as support for its decision upon a case legally and factually at variance with the case decided.*

B.

THE DIRECT CONFLICT

The cited cases — one from each District Court of Appeal except the Fifth District Court of Appeal — are but four of the multitude of Florida cases which stand for the following well established appellate principles:

1. The party seeking to have a jury verdict set aside admits, for purposes of that proceeding, all material facts as testified to by the opposing party, and all other evidence together with all inferences favorable to the opposing party which might reasonably be drawn from the evidence as a whole.

2. The criteria by which the verdict of a jury must be judged is whether there was sufficient competent evidence before the jury from which the jurors, as reasonable people, could have reached the findings of fact inherent in the verdict.

3. A jury verdict and judgment entered in accordance therewith come before a District Court of Appeal clothed with a presumption of correctness.

4. The function of an appellate court is not to substitute its judgment for that of a jury on disputed questions of fact.

Reverting to the case at Bar, and setting aside any questions relating to BRIDGES' cause of action for invasion of privacy, she also pled and proved a cause of action for intentional infliction of emotional distress. Such a tort does exist in Florida. A jury may award damages to a plaintiff on such a cause of action when it finds that the defendant has acted in such a manner that its conduct exceeds all bounds which could be tolerated by society, and is of a nature especially calculated to cause mental damage of a very serious kind. See FOOD FAIR, INC. v. ANDERSON, 382 So. 2d 150 (Fla. 5 DCA 1980), and numerous cases cited therein. In view of the intentional nature of the tort, a newspaper cannot nearly as easily hide behind the first amendment and concepts related to "newsworthiness." The trial court found on this record that BRIDGES had proved a jury submissible case of intentional infliction of emotional distress. The jury was charged in that regard. The jury found that respondents had in fact committed a tort. Yet in the decision sought to be reviewed, the District Court of Appeal totally ignored the principles of law detailed, supra, and glossed over the record stating simply that the test of outrageousness had not been met. In so doing, the District Court climbed into the jury box and rendered a decision in direct conflict with the decisions rendered by the other District Courts of Appeal of Florida in the cited cases.

VI.

CONCLUSION

It is respectfully submitted that for the reasons stated herein, the decision sought to be reviewed is in express and direct conflict with the cited decisions. This Court should exercise its discretionary jurisdiction in the premises because a gross injustice has been done here by a defendant found by a jury to be guilty of the tort of intentional infliction of emotional distress.

Respectfully submitted,

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